Supreme Court, U. S.
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80-335
No.

IN THE

Supreme Court of the United States

Term, 1980

ROBERT WILLIAMS,
Petitioner,

VS.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRUNTRAGER & BRUNTRAGER, P. C.
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QUESTIONS PRESENTED

1. Whether the seizure of certain items was illegal because it was beyond the scope of the search warrant when the executing and seizing officers had every intention of seizing such extra-warrant materials.

2. Whether the evidence used against the petitioner in the federal prosecution was obtained in violation of his rights under the 4th and 5th Amendments to the Constitution of the United States and the laws of the United States.

The Fourth Amendment to the Constitution of the United States provides as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment to the Constitution of the United States provides in pertinent part as follows:

> ". . . nor be deprived of life, liberty, or property, without the due process of law."

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No.

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ROBERT WILLIAMS,
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VS.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The petitioner, Robert Williams, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on June 25, 1980.

There was no formal opinion of the United States District Court for the Eastern District of Missouri. The report and recommendation of the United States Magistrate denying petitioner's Motion to Suppress is set forth in Appendix A infra pp. A-1; it was not required. The District Court entered its Order of Judgment and Commitment Order pursuant to a jury's determination of guilt on February 22, 1980. A copy of said judgment is set forth in Appendix B p. A-12.

The opinion of the Court of Appeals has not been reported. It is reproduced in Appendix D to this petition.

The opinion of the Court of Appeals denying petitioner's application for a stay of issuance of mandate pending application to the Supreme Court of the United States is not reported and contained infra as Appendix E p. A-17.

JURISDICTION

The judgment of the Court of Appeals (Appendix D p. A-14 infra) was entered on June 25, 1980. On July 28, 1980, final judgment denying petitioner's motion for stay of issuance of mandate was entered. The jurisdiction of this court is involved under 28 USC §1254(1).

STATEMENT OF CASE

On November 28, 1979, a search warrant was executed at 5801 Riverview in the City of St. Louis, Missouri. The warrant was obtained and executed by St. Louis Police Officers. The warrant directed a search for cocaine, heroin, and talwin. Inside the residence, approximately 44.69 grams of cocaine were seized from a jewelry box on the second floor (Tr. 17, 21, 128). The police also seized the jewelry box and its contents, photographs of the defendant and a plumbing bill from a closed dresser drawer (Tr. 17, 21, 131). Petitioner and a female were placed under arrest for violation of Missouri controlled substance law. A federal indictment was returned against petitioner only.

In testimony adduced at the trial of petitioner, the seizing officer stated that he seized items inside the residence that would reveal or indicate ownership of the premises (Tr. 10). Furthermore, he stated that he seizes this kind of possessory evidence in every case as a part of normal procedure regardless of the circumstances (Tr. 10, Appendix F).

GROUNDS FOR ISSUANCE OF WRIT

The present case warrants review in that a general issue of public importance is raised and we submit was wrongfully decided below:

Appellant submits that in its opinion of June 25, 1980, the United States Court of Appeals for the Eighth Circuit failed to address the issue concerning the seizure and introduction into evidence of two photographs and a plumbing bill. Appellant reiterates that the seizure was beyond the scope of the warrant, not admissible under any exception and, therefore, was in violation of the Fourth Amendment.

The Court of Appeals cites as controlling *United States* v. *House,* 604 F. 2d 1135 (8th Cir. 1979), however, this case is readily distinguishable from the case at bar. *House* argued that the seizure of certain items was illegal because it was beyond the scope of the warrant. The officers seized a jacket, wallet, keys, and automobile ownership papers. The Court held that these items were "mere evidence" and, therefore, admissible. It should be noted that these were the only items that fit the mere evidence description, but were not the only items seized. Also, each of those items was in some way linked to criminal activity. Drugs had been found in the jacket. The wallet contained over $3,000 and the keys fit the lock of a car described in a second warrant. The ownership papers were seized under the second warrant.

The Court of Appeals also commented on the seizure of a coin collection, gun and photograph of a car during the execution of the first warrant. The coin collection had been suppressed. In regards to the gun and photograph the Court states:

> "In our opinion the gun and photograph should have been suppressed as well because these items were not within the scope of the search warrant . . ." (at page 1143).

The failure to suppress was found to constitute harmless error because they were not introduced into evidence. The Court further stated in a footnote that the government's argument that the photograph was lawfully seized under the plain view exception was inapplicable.

> ". . . although the initial intrusion was lawful and the discovery inadvertent, the incriminating nature of the object seized was not 'immediately apparent' . . . there is nothing particularly incriminating about photographs of cars. We note that the investigation in the present case concerned controlled substances. The incriminating nature of such a photograph would arguably be 'apparent' in an investigation involving stolen cars, for example." (p. 1143)

It is clear that based on this decision the photograph and plumbing bill were illegally and erroneously admitted into evidence.

As is clear from the testimony of the case at bar, the photographs and bill were found in a closed dresser drawer. Officer Hegger testified that he had not looked in the jewelry box or handled it in any way. Nor was he aware that there was any question of ownership of the house. His sole reason for seizing the personal papers was normal procedure

Items inadvertently discovered during a lawful search may be seized if there is a "nexus—automatically provided in the case of fruits, instrumentalities or contraband—between the item to be seized and criminal behavior". *Warden* v. *Hayden,* 387 U.S. 294, 307; 87 S.Ct. 1642, 1650; 18 L. Ed. 2d 782 (1967). The test is not only the inadvertent discovery of evidence but is also its unintentional discovery as well.

In its opinion, this Court also cites *United States* v. *Golay,* 502 F.2d 182 (8th Cir. 1974) in which officers executing a warrant for diamonds found packets of money in Bank of St. Louis wrappers and a pistol. Since the original intrusion was lawful the inadvertent discovery of incriminating evidence was lawfully

seized. The same was found to be true in *United States* v. *Davis,* 542 F.2d 743 (8th Cir. 1976), Cert. denied, 429 U.S. 1004 (1976), in which terms stained by red dye contained in a rigged money packet were seized. In both of these cases, the nexus between the evidence seized and the criminal behavior is readily apparent. However, in both cases this Court emphasized that the officers had no reason to believe that these items would be found on the premises. In *Davis,* the officer testified that although he knew a security packet had been included, he had no reason to believe he would find stained items. The search was made in Oklahoma and Davis had been arrested in Chicago with some of the money.

In the present case the discovery of the photographs and bill was inadvertent as to these specific items, but not as to the type of evidence. Officer Hegger specifically stated that based on other investigations, personal papers showing possession are seized as a matter of routine. The officer intended to seize anything that in his opinion showed appellant's interest in the premises.

The photographs and bills, by themselves, are innocuous neutral objects and in no way indicate any criminal activity on the part of appellant. Their importance as evidence was not known until someone sat down with the jewelry box and determined that the jewelry in the photographs were present in the box or checked the Recorder of Deeds to verify title on the house. In both instances, further examination was necessary to establish their probative value. The officer's hunch or guess proved to be correct, but the determination of search and seizure questions must be based on the facts the officer had at the time, only those facts can justify a seizure. To hold otherwise would do away with probable cause and permit police to justify any search on the basis of what was found. There would then be no limit as to what could be seized and held for further examination on the grounds that it may be connected.

In *United States* v. *Jackson,* 576 F.2d 749 (8th Cir. 1978), the Court of Appeals also addressed the issue of personal papers seized under the plain view doctrine. A file drawer had been seized and later searched by the FBI. Two documents were introduced at trial. The Court held that plain view could not be used to justify "rummaging through file cabinets, even with probable cause to believe that incriminating evidence lies within . . ." (at page 753). As stated supra the photographs and bill were found in a closed dresser drawer.

The trial court committed reversible error by failing to suppress and allowing the introduction into evidence the photographs and plumbing bill. As stated, their seizure was in violation of the Fourth Amendment for the following reasons:

1. The seizing officer specifically stated that as a matter of normal police procedure, this type of evidence, i.e. items to show constructive possession, are searched for and seized. The search warrant failed to describe these items and they were not inadvertently discovered.

2. The incriminating nature of these items is not readily apparent, therefore, nothing existed at the time of the seizure to link the evidence to be seized with the criminal activity. The officer specifically stated that these items were neither contraband nor evidence of another crime. The plain view exception would not apply.

3. The photographs and plumbing bill are not mere evidence because at the time of the seizure the required nexus to take criminal activity did not exist. The officers were searching for controlled substances, not stolen jewelry or plumbing supplies.

Based on the foregoing, it is clear that the Court of Appeals' reliance on *House* is misplaced and that based on that decision, the photographs and bill never should have been admitted.

CONCLUSION

For the reason stated above, the decision of the Court of Appeals in the instant case raises a question of general importance in the discrimination and execution of search warrants and the seizure of extra warrant materials. The present petition for a writ of certiorari should, therefore, be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 79-178 Cr(2)

United States Of America,
Plaintiff,

v.

Robert Williams,
Defendant.

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE

(Filed January 29, 1980)

The pre-trial motions of the defendant Robert Williams to suppress his oral or written statements and to suppress other physical evidence were referred to the undersigned United States Magistrate for hearing and a recommended disposition. 28 U.S.C. §636(b). A hearing was held on these motions on January 22 and 23, 1980. At this hearing the following witnesses testified for the Government: Police Officer Timothy McDonough, Police Officer Peter Gober, and Police Detective Joseph Mokwa. Also received in evidence as a composite exhibit were copies of a search warrant issued on November 27, 1979, and the written affidavits and inventories relating thereto. Defendant offered the testimony of Police Officer Harry Hager and Police Detective Robert Froelich. Throughout the hearing defendant was present and represented by counsel.

After considering the evidence adduced at the hearing and the statements of counsel the undersigned makes the following findings of fact and conclusions of law:

Findings Of Fact

1. On November 27, 1979 St. Louis Police Officers McDonough, Gober, Mokwa, and Hager received information from a confidential informant to the effect that defendant Robert Williams was selling narcotics from a location at 5801 Riverview, St. Louis, Missouri. McDonough and Gober prepared written affidavits for a search warrant and presented them to the St. Louis Circuit Attorney's Office. Later that day the affidavits were presented to the Honorable Richard J. Mehan, Circuit Judge. The affidavits were sworn to by McDonough and Gober before Judge Mehan and contain all the information that Judge Mehan considered before signing a search warrant for the residence at 5801 Riverview on that date.

2. The search warrant issued by Judge Mehan stated that certain contraband narcotics, cocaine, heroin, and talwin, were being kept on the premises at 5801 Riverview, St. Louis, Missouri, a two-story single family red brick constructed residence. The warrant authorized the seizure of those described items.

3. The written affidavit of Detective Gober, which was presented to Judge Mehan, stated that the source of his information was

> a confidential source who has proven himself reliable in the past on four occasions. This source has provided information which has resulted in three convictions for narcotic possession charges and one case is pending in Circuit Court at this time on narcotic charges.

The affidavit further stated that Robert Williams is selling cocaine, heroin, and talwin from his two-story family residence located at 5801 Riverview. The informant stated that he had personally purchased cocaine from Williams for more than a year and that he observed in a first floor kitchen large quantities of cocaine and talwin. The informant stated that Williams has bragged about "larger amounts" of cocaine upstairs in the

residence. On one occasion, the informant stated, he observed Williams go upstairs and return with a baggie containing cocaine. The affidavit also stated that on November 26, 1979, the informant was inside the residence and observed on a table in the kitchen a quantity of cocaine and a quantity of talwin. The affidavit also stated that Detective Gober knew Williams has been convicted of murder and possession of heroin and that the informant stated that Williams maintains guns and stolen property hidden on the premises. Finally, the affidavit stated that surveillances of the residence revealed that several persons who had been convicted of narcotic offenses daily enter the premises and leave after short periods of time.

4. The written affidavit of Dective McDonough, which was presented to Judge Mehan, stated that the source of his information is a confidential informant who has

> provided information during the past twelve months which has resulted in two cases pending for narcotic violations. I have known this source for about fifteen months.

This informant stated he has purchased heroin, cocaine, and talwin from Robert Williams during the past year. On November 26, 1979, the source was inside 5801 Riverview, Williams' home, and

> observed about one and one-half ounces of cocaine lying on a kitchen table. The source further stated also in view was a manila envelope containing numerous tablets of talwin. This envelope was on a kitchen shelf.

The informant stated that Williams has bragged about keeping "larger amounts" of cocaine on the second floor and once the informant observed Williams return from upstairs with a plastic baggie of cocaine. The informant described Williams as "well known in drug circles as a key distributor" of cocaine, heroin, and talwin. The affidavit stated that police records indicated that Williams has prior convictions for murder and possession

of heroin. The informant stated that Williams maintains firearms and stolen property in his home. The informant further stated that Williams "will purchase stolen items in return for drugs, if the items are valuable and worth his investment." The affidavit finally states that persons with known prior convictions for narcotics possession are frequently observed entering and leaving the premises on a daily basis.

5. The search warrant issued by Judge Mehan on November 27, 1979 was executed by several officers on November 28, 1979 at approximately 8:45 a.m. Upon entering the resident Officer Hager and Detective Mokwa arrested defendant Robert Williams in the kitchen and brought him into the living room. There custody of defendant was given to Officer McDonough. Officer Hager advised defendant of the search warrant then went upstairs in the residence with Detective Mokwa. There they found a Negro female who was brought downstairs and taken to where defendant Williams was seated on a couch. Hager, Mokwa and Gober returned upstairs to conduct the search. A loaded revolver was observed lying on top of a night-table in a bedroom; the weapon was seized. Gober searched a man's brown jewelry box on a dresser and found two baggies containing a powdery substance believed to be cocaine.

6. Office Gober brought the jewelry box and the baggies downstairs and advised defendant Williams he was under arrest for possession of a controlled substance. At that time Gober read defendant his *Miranda* warnings from a police form. Gober asked defendant if he understood his rights; defendant responded by nodding his head in the affirmative and by stating that he understood.

7. Next, the Negro female was arrested and her handbag searched. Drugs were found inside it. Officer McDonough read her the *Miranda* warnings and began to question her in Williams' presence concerning drugs. Whereupon, Williams said, "Shut up, bitch, and don't sign anything."

8. Next, defendant asked Gober "Why don't you let the girl go? Nothing here is her's." Defendant asked the officer whether they were going to take his jewelry.

9. Next, Officer McDonough asked defendant if there were any other drugs. Defendant responded by saying "You've got the two OZ's. You know what I have. Your snitch told you all."

10. The officers in executing the search warrant searched the basement and the two upper floors of the house. Among the many items seized from the residence were the following:*

(a) one jewelry box;

(b) three baggies with their contents;

(c) $638.00 in currency;

(d) many items of jewelry;

(e) one .38 caliber revolver with six rounds;

(f) three glass vials;

(g) five large glass vials;

(h) three measuring spoons;

(i) one hand scale;

(j) one hinged double measuring spoon;

(k) three plastic vials;

(l) one black zippered case;

(m) three measuring spoons;

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* These described items were identified by counsel for the Government during the hearing as items of physical evidence which the Government might offer in evidence at trial.

(n) one case containing a scale and weights and measures; and

(o) one envelope addressed to defendant from Thomas R. Pitlyke Real Estate Company, containing a deed of trust.

All of the items seized were inventoried.

11. Officer Gober and other officers conveyed defendant Williams and the Negro female by automobile from the residence to police headquarters. En route no officer asked defendant any questions. However, defendant asked the officers for the identity of the informant. The police did not respond to the request. Next, defendant stated that had this search been made four days ago he would not have known who the informant was, but that now the homicide rate in the city will go up.

12. The statements made by defendant Williams in the presence of or to the police officers on November 27 and 28, 1979, described in Findings Nos. 6, 7, 8, 9, and 11, were made after he had been advised of his constitutional rights to remain silent and to consult an attorney. These statements were made voluntarily. No promises or threats were made to coerce defendant to make these statements.

13. On January 4, 1980 Detective Robert Froelich and other officers were conducting a surveillance of the residence at 5801 Riverview. Detective Froelich observed one Charles Gill approach the residence. He knew Gill was the subject of a police arrest order for the commission of three felonies, Froelich having placed the arrest order on the teletype himself. Although Froelich knew Gill was on a bail bond in this federal district court, he had attempted unsuccessfully to locate him on several occasions. As Froelich was approaching Gill to arrest him Gill was knocking on the front door of 5801 Riverview. Froelich identified himself as a policeman. The front door opened,

defendant Williams told Gill "Hurry up, Papa, get in. It's the police." Gill ran into the residence. Gill and the defendant ran upstairs. Gill was arrested. Williams entered a bathroom on the second floor, closing the door behind him. Froelich knew that Williams was a convicted felon and that a firearm had been seized from the residence on November 28. Froelich went into the bathroom to see if Williams was obtaining a weapon and found Williams flushing a substance from a glass vial down the toilet. Froelich seized the vial from Williams, believing from his police training and experience that the contents of the vial were narcotics, Froelich had no arrest warrant for defendant or a search warrant for the residence at that time.

Conclusions Of Law

In his motions to suppress defendant attacks (1) the issuance and (2) execution of the search warrant on November 27, and 28, 1979; (3) the taking of the oral statements by defendant on November 28, 1979; and (4) the seizure of the vial from defendant on January 4, 1980.

1. **The Issuance of the Search Warrant**

To sustain the issuance of the search warrant by Judge Mehan on November 27, 1979 it is necessary to look at the written affidavits of Officers McDonough and Gober to determine whether the affidavits adequately informed Judge Mehan of

(a) "some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were" and

(b) some of the circumstances from which Officers McDonough and Gober concluded the informant was credible or his information reliable.

Aguilar v. *Texas,* 378 U.S. 108, 114 (1964). The affidavits show that the informant in the past provided information sufficiently reliable to result in criminal prosecution and conviction, and that

the informant personally observed the facts he related to the officers. *United States* v. *Viggiano,* 433 F.2d 716, 719 (2nd Cir. 1970), *cert. denied,* 401 U.S. 938 (1971). The informant recounted his prior purchase of cocaine from Williams, an admission against penal interest. *United States* v. *Harris,* 403 U.S. 573, 583 (1971). Therefore, the affidavits were sufficient to establish probable cause for the issuance of the search warrant by Judge Mehan.

Defendant alleged generally that the information in the affidavits is untrue. After questioning the affiants during the instant evidentiary hearing the defendant failed to make a showing that the affidavits contained any false material statement. Defendant is entitled to no relief under the teaching of *Franks* v. *Delaware,* 438 U.S. 154 (1978).

Defendant alleged in his motion that there was no adequate description of the place to be searched in the affidavits or the warrant. The warrant described the place as "5801 Riverview, St. Louis, Missouri, a two story single family red brick constructed residence." Officer McDonough's affidavit described the place as "5801 Riverview, St. Louis, Missouri, a single family, two story red brick residence." Officer Gober's affidavit described the place as "5801 Riverview, a single family, two story red brick building." Such descriptions adequately identified the place intended to be searched. *Steele* v. *United States,* 267 U.S. 498, 503 (1925).

2. The Execution of the Search Warrant

Defendant argued that certain of the items were seized outside the proper scope of the search warrant. Pursuant to a properly issued search warrant, any evidence bearing a reasonable relationship or "nexus" to the circumstances justifying the search may be seized, although the seized items are not expressly described in the warrant. *Warden* v. *Hayden,* 387 U.S. 294, 307 (1967). In this case the circumstances justifying the search related to the defendant's sale of narcotics in the residence, the

location of the described narcotics in the residence, the location of the described narcotics in several areas of the residence, Williams' status as a convicted felon, the location of guns and stolen property on the premises, and the receipt of stolen property in exchange for drugs. Clearly, items (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), and (n), set forth in Finding No. 10, were properly seized under the warrant. So also was item (o), properly seized since it related to Williams' interest in the premises. The firearm, item (e), related to defendant's status as a felon by whom the possession of a firearm is a violation of law. Item (d), many times of jewelry, related to defendant's receipt of stolen property in exchange for drugs, as described by the informant in the affidavit. Clearly, the proceeds or fruits of illegal drug transactions may be seized as evidence. *Id.*

3. **Defendant's Statements**

Defendant's statements to the officers on November 28, 1979 in the residence and en route to the police station were given after he had been advised of his rights under *Miranda* v. *Arizona,* 384 U.S 436 (1966). He acknowledged he understood his rights. The undersigned finds and concludes that these statements were made voluntarily and that defendant knowingly waived his right to remain silent.

4. **Evidence Seized on January 4, 1980**

Defendant argues that the evidence seized from 5801 Riverview on January 4, 1980, *i.e.* the vial taken from defendant's hand in the bathroom, should be suppressed. The undersigned disagrees. It was seized by Detective Froelich while it was in plain view in defendant's hand. Froelich was following defendant into the bathroom, a place where Froelich had a right to be because Charles Gill had just been arrested and Froelich knew that defendant was in the bathroom. Froelich also knew that a weapon had been seized from the same house on November 28, and he properly took the precaution of assuring that defendant would not obtain or use a weapon to prevent Gill's arrest. The

discovery and observation of the vail was inadvertant, Froelich not having previously seen the vial. The incriminating nature of the vial and its contents which defendant was flushing down the toilet was immediately apparent. *United States* v. *Roberts,* ____ F.2d ____ (8th Cir. slip op. No. 79-1396, filed November 13, 1979). Therefore, the vial was properly seized by Detective Froelich, although without a search warrant.

Recommendation

For the reasons set out above, it is the recommendation of the undersigned United States Magistrate that the three motions of defendant Robert Williams to suppress his statement (filed December 27, 1979), to suppress evidence seized from the resident at 5801 Riverview on November 28, 1979 (filed December 27, 1979), and to suppress other evidence (filed January 23, 1980) be denied. The parties are advised that they may file written objections to this Report and Recommendation.

/s/ DAVID D. NOCE
UNITED STATES MAGISTRATE

Dated this 24th day of January, 1980.

MEMORANDUM AND ORDER OF UNITED STATES MAGISTRATE

(Filed January 29, 1980)

The pre-trial motion of the defendant Robert Williams for discovery and inspection under Rule 16, Federal Rules of Criminal Procedure, was referred to the undersigned United States Magistrate for disposition. 28 U.S.C. §636(b). A hearing was held on this motion on January 22, 1980.

In his motion defendant seeks six categories of evidence. During the hearing counsel for the Government and for the defendant agreed that all of the items sought either were already provided to the defendant or would be provided voluntarily to the defendant, if such evidence exists. The defendant did not testify before a grand jury.

Whereupon,

IT IS HEREBY ORDERED that the subject motion for discovery and inspection be and is denied as moot.

/s/ DAVID D. NOCE
UNITED STATES MAGISTRATE

Dated this 29th day of January, 1980.

APPENDIX B

AO 245
5/75)

United States of America vs

United States District Court for

EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DEFENDANT: ROBERT WILLIAMS Micro-Time

DOCKET NO. 79-178Cr (2)

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH DAY YEAR: February 22, 1980

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Raymond A. Bruntrager (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea. [ ] NOLO CONTENDERE. [X] NOT GUILTY

FINDING & JUDGMENT

There being a [ ] verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of knowingly and intentionally possessed with specific intent to distribute, approximately 44.69 grams net weight of cocaine, a Schedule II narcotic controlled substance drug,

In violation of Title 21, United States Code, Section 841(a)(1), as charged in the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) years as to and under the charge contained in the Indictment, and shall be followed by a special parole term of FIVE (5) years as provided by Title 21, United States Code, Section 841(b)(1)(A).

Defendant is released on bond pending appeal.

FILED

FEB 22 1980

EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

SPECIAL CONDITIONS OF PROBATION

A TRUE COPY OF THE ORIGINAL
Filed February 22, 1980
Attest: Eyvon Mendenhall, Clerk
By Gloria M. Fuge
Deputy Clerk
Dated: August 7, 1980
St. Louis, Mo.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
[X] U.S. District Judge
[ ] U.S. Magistrate

John F. Nangle

Date February 22, 1980

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 79 - 178 CR (2)

United States of America,
Plaintiff,

vs.

Robert Williams,
Defendant.

ORDER

(Filed March 13, 1980)

IT IS HEREBY ORDERED that defendant's motion for a new trial be and is denied.

/s/ JOHN G. NANGLE
United States District Judge

Dated: March 13, 1980.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 80-1141

United States of America,
Appellee,

v.

Robert Williams,
Appellant.

Appeal from the United States District Court
for the Eastern District of Missouri.

Submitted: May 21, 1980
Filed: June 25, 1980

Before BRIGHT, HENLEY, and McMILLIAN, Circuit Judges.

PER CURIAM.

Robert Williams appeals his conviction after a jury trial of possessing cocaine, in violation of 21 U.S.C. § 841(a)(1) (1976). The district court imposed a fifteen-year sentence on the appellant. We affirm the conviction.

On appeal, Williams challenges the seizure and introduction into evidence of two photographs of himself and a plumbing bill. Appellant contends that the seizure of these items exceeded the authorization contained in the warrant which described cocaine, talwin, and heroin as items to be taken.

An examination of the record discloses that the photographs seized show appellant wearing jewelry similar to jewelry found

with cocaine in a jewelry box located in an upstairs bedroom of the appellant's premises. Further, the plumbing bill seized by the officers was introduced into evidence to show that the appellant occupied the premises where the officers found cocaine during their search. Thus, the seized items in question tended to show that Williams was in constructive possession of the drugs and served to negate any inference that the contraband found in the jewelry box belonged to a woman who was in the premises at the time of the search.

Our resolution of this issue is controlled by the court's decision in *United States* v. *House,* 604 F.2d 1135 (8th Cir. 1979), where we said:

> [A]ppellant argues that the seizure of certain items during the execution of both search warrants unlawfully exceeded the scope of the warrants. Appellant challenges the seizure of a black leather jacket, a gun, a coin collection, and a photograph of the 1970 Cadillac from the apartment; keys and a wallet taken from appellant; and car ownership papers taken from the car. The government argues that the jacket, wallet, keys, and car ownership papers were seized to show constructive possession by appellant of drugs or money. Over $3,000 was found in the wallet; drugs were found in the jacket, a locked overnight bag in the bedroom closet, and the car. The government argues that these items constituted "mere evidence" that would aid in a particular apprehension or conviction. *Warden* v. *Hayden,* 387 U.S. 294, 307, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967). We find the government's position to be well taken. [*Id.* at 1142.]

See also United States v. *Davis,* 542 F.2d 743, 745 (8th Cir. 1976), *cert. denied,* 429 U.S. 1004 (1976); *United States* v. *Golay,* 502 F.2d 182, 184-86 (8th Cir. 1974). Accordingly, we hold that a logical nexus exists between the items in question and appellant's criminal behavior which justified the police seizure. *See Warden* v. *Hayden,* 387 U.S. 294, 307 (1967).

Affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

September Term, 1979

No. 80-1141

United States of America,
Appellee,

vs.

Robert Williams,
Appellant.

Appeal from the United States District Court
for the Eastern District of Missouri.

The Court having considered appellant's motion for stay of issuance of mandate pending application to the Supreme Court of the United States and for permission to stay bond, it is now ordered by the Court that appellant's motion in this cause be and is hereby denied.

July 28, 1980

APPENDIX F

Q. You weren't aware at that time whether there was any question of whether or not Robert Williams owned the house, isn't that correct?

A. Sir?

Q. You were not aware of anything that would—that the question of who owned the house was a question to be determined in this trial with you, at that time?

A. When he was placed under arrest, yes, sir, I knew that would be something that would be brought up.

Q. How did you know that?

A. I had a few investigations before, where that has been a main item in the trial is who lives there, does the defendant live there? So therefore I seized items to show the defendant lived there.

Q. There was nothing in this particular case, you're claiming that on past experience?

A. On the personal papers.

Q. You seized the personal papers on the chance, I understand, there may have been a question as to who owned the premises?

A. No. I normally do it in every case.

Q. In every case?

A. Yes, sir.

Q. There was nothing about this case particularly that caused you to seize these personal items, is that correct?

A. No, just normal procedure to seize those papers.

Q. Certainly the pictures are not contraband, isn't that correct, the two pictures I'm holding in my hand, Exhibits 2 and 3 are not contraband, are they?

A. No, sir.

Q. They are not fruits of a crime, are they?

A. No, sir, not that I know of.

Q. You were seizing them only for evidence, is that correct?

A. Yes, sir, that's correct.

Q. Was the defendant present when these were seized?

A. He was downstairs.

Q. I take it he was not present?

A. Not in that room, no, sir.

Q. The defendant had never been in that room that day, as far as you knew, is that right, as far as you knew?

A. I didn't see him in that room, no, sir.

Q. That's right.

And he was not arrested in that room, is that correct?

A. Yes, sir.

Q. There was nothing about this case particularly that caused you to seize these personal items, is that correct?

A. No, just normal procedure to seize those papers.

Q. Certainly the pictures are not contraband, isn't that correct, the two pictures I'm holding in my hand, Exhibits 2 and 3 are not contraband, are they?

A. No, sir.

Q. They are not fruits of a crime, are they?

A. No, sir, not that I know of.

Q. You were seizing them only for evidence, is that correct?

A. Yes, sir, that's correct.